

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION**

MICHAEL JAMES EVANS,

Plaintiff,

v.

MICHELLE NELSON, et al.,

Defendants.

No. 2:19-cv-01210-MK

ORDER

AIKEN, District Judge.

This case comes before the Court on a pair of Findings and Recommendations (“F&Rs”) filed by Magistrate Judge Mustafa Kasubhai. The first F&R, ECF No. 206, recommends that the claims against Defendant Nelson be dismissed without prejudice and the second F&R, ECF No. 208, recommends that Defendants’ Motion for Summary Judgment Part 2, ECF No. 120, be granted and the remaining claims in this case be dismissed.

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”

28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."). Although no review is required in the absence of objections, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court should review the recommendation for "clear error on the face of the record."

In this case, Plaintiff has not objected to the first F&R, ECF No. 206, which recommends that the claims against Defendant Nelson be dismissed without prejudice. The Court has reviewed the first F&R, ECF No. 206, and finds no error. The first F&R, ECF No. 206 is therefore ADOPTED and the claims against Defendant Nelson are DISMISSED without prejudice.

With respect to the second F&R, ECF No. 208, Plaintiff has filed Objections, ECF No. 210, and Defendants have filed a Response, ECF No. 215. The Court has reviewed the F&R and the record and finds no error. The Court therefore ADOPTS

the second F&R, ECF No. 208, and Defendants' Motion for Summary Judgment Part 2, ECF No. 120, is GRANTED and all remaining claims are DISMISSED. Final judgment shall be entered accordingly.

It is so ORDERED and DATED this 11th day of July 2024.

/s/Ann Aiken

ANN AIKEN

United States District Judge